

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Procedures Related to Commission Views

Docket No. RM2015-14

**COMMENTS OF THE PUBLIC REPRESENTATIVE**

(August 27, 2015)

On July 21, 2015, the Postal Regulatory Commission (Commission) proposed new rules that establish procedures by which it will solicit public comments that may inform the development of the Commission's section 407 views it provides to the Secretary of State on certain international mail matters.<sup>1</sup> The proposed rules seek to formalize the general approach the Commission adopted in Docket No. PI2012-1. Notice at 2. Overall, the Public Representative supports the proposed rules as the rules seek to facilitate public participation in, and increased transparency of, the Commission's development of its section 407 views while balancing the Commission's need to analyze relevant proposals and submit its views to the Secretary of State in a timely manner. However, the proposed rules could benefit from additional clarification and explanation. Accordingly, the Public Representative offers the following comments and suggestions for the Commission's consideration.

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<sup>1</sup> Order No. 2602, Notice of Proposed Rulemaking Establishing Procedures Related to Commission Views, July 21, 2015 (Notice).

## BACKGROUND

By statute, the Secretary of State exercises “primary authority for the conduct of foreign policy with respect to international postal services..., including the determination of United States positions...in negotiation with foreign governments and international bodies.” 39 U.S.C. § 407(b)(2). However, before concluding an agreement that establishes a rate or classification for international market dominant products, the Secretary of State must request the Commission’s views on whether the agreement is consistent with modern rate regulations established by the Commission pursuant to section 3622. *Id.* at § 407(c)(1). Each agreement concluded under section 407(b) must be consistent with the views submitted by the Commission except if the Secretary of State determines, in writing, that ensuring such consistency is “not in the foreign policy or national security interest of the United States.” *Id.* at § 407(c)(2).

Since the enactment of the Postal Accountability and Enhancement Act of 2006, the Secretary of State requested Commission views on relevant proposals considered at the 2008 Universal Postal Union (UPU) Congress held in Geneva and the 2012 UPU Congress held in Doha. *Id.* at 2. The Commission transmitted its views in response to both of these requests.<sup>2</sup> When developing its views on relevant proposals considered at the Doha Congress, the Commission issued a request for comments on “the principles that should guide the development of its views.”<sup>3</sup>

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<sup>2</sup> *Id.* See Postal Regulatory Commission, Views Provided to U.S. Dept. of State for the 2008 UPU Congress, in accordance with 39 U.S.C. 407(c), June 30, 2008 (2008 UPU Report); Postal Regulatory Commission, View Provided to U.S. Dept. of State for the 2012 UPU Congress, in accordance with 39 U.S.C. 407(c), September 9, 2012 (2012 UPU Report). The Commission also submitted its views on relevant proposals discussed at UPU Postal Operations Council (POC) meetings held in 2013 and 2014.

<sup>3</sup> Docket No. PI2012-1, Notice Providing Opportunity to Comment on Development of Commission Views Pursuant to 39 U.S.C. 407(c)(1), July 31, 2012, at 1 (Order No. 1420).

## **DISCUSSION**

### **A. General Recommendations**

#### **1. Availability of Proposals**

The Commission notes that proposals are typically posted to the UPU website “pursuant to a series of deadlines” that begin about six months before a Congress convenes. Notice at 2. Accordingly, some relevant proposals may be available several months before the UPU Congress. When this occurs, the Commission should make every effort to provide the text or a detailed summary of the relevant proposals to the public. If the Commission provides such information during a section 407 public inquiry docket, then potential commenters will have more equal access to essential information, which will facilitate discussion in two ways.

First, by providing text or a summary of the relevant proposals, the Commission will also provide potential commenters a lexicon of terms and titles that they may use when referencing specific proposals. In Docket No. PI2012-1, the Commission did not provide the text or summaries of the relevant proposals and this lack of information required commenters to provide their own titles and descriptions of the proposals they considered relevant. As a result, commenters used different terms to refer to the same proposals. For example, commenter James I. Campbell Jr. (Mr. Campbell) discussed the Postal Operations Council (POC) proposal for terminal dues, which included Proposals 20.17.1, 20.18.1, and 20.19.1, while the Postal Service offered its comments on the Council of Administration (CA)/POC terminal dues package, which included

Proposals 20.27.1, 20.28.1, and 20.29.1.<sup>4</sup> Both Mr. Campbell's and the Postal Service's comments discussed proposals designed to increase terminal dues rates within a cap and floor system. Presumably, both parties' comments focused on the same set of proposals but because the commenters used different terms and proposal numbers, it may have been difficult for the general public to follow the commenters' discussion regarding these specific proposals. By providing the text or a summary of the relevant proposal in advance, the Commission is better able to ensure uniformity of terms used by interested parties when referring to a specific proposal. This will facilitate commenters and the general public in understanding the comments and following the oftentimes complex discussion related to specific proposals.

Second, if the Commission provides information regarding relevant proposals, then potential commenters will be better informed regarding the scope of issues that may be commented upon as part of a section 407 public inquiry docket. As described above, when the Commission established Docket No. PI2012-1, it provided neither the text nor a summary of the relevant proposals under consideration at the 2012 UPU Congress. As a result, Mr. Campbell provided a draft of his comments, which included information on three terminal dues proposals.<sup>5</sup> Mr. Campbell stated that he hoped that his summary of the proposals would provide potential commenters information as to the nature or effects of the terminal dues proposals. Campbell Draft Comments at 4-5.

Due to the lack of information provided by the Commission, subsequent comments may

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<sup>4</sup> Docket No. PI2012-1, Comment of James I. Campbell Jr., August 27, 2012, at 17 (Campbell Comments); and Docket No. PI2012-1, Comments of the United States Postal Service August 27, 2012, at 5-6 (Postal Service Comments).

<sup>5</sup> Docket No. PI2012-1, Comment on Principles for Evaluation of the Terminal Dues Proposals before the Doha Congress of the Universal Postal Union: Draft Description of the POC Proposal, August 14, 2012, at 4 (Campbell Draft Comments).

have been influenced by Mr. Campbell's draft comments and limited to the three proposals he discussed in his draft comments.

This issue was highlighted by the Public Representative in Docket No. PI2012-1 when he observed that Mr. Campbell's draft comments focused on only three proposals out of the nearly 400 proposals submitted for consideration at the 2012 UPU Congress.<sup>6</sup> The Public Representative stated that out of the nearly 400 proposals, there were probably more than three proposals that implicate the Commission's expertise. PR Comments at 4. It appears that the Public Representative was correct because the Commission's report provided views on several proposals that were not discussed in Docket No. PI2012-1; including Proposal 20.12.91 (which classified letter post items based on their formats), Proposal 20.7.1Rev1 (which altered the definition of "literature for the blind" to "items for the blind" and expanded the product), and Proposal 20.13.3 (which provided for the creation of an international merchandise return service). 2012 UPU Report at 10-15. If the Commission provides the text or a summary of the relevant proposals, then potential commenters will have information on a wider range of relevant proposals and will not be limited to the information provided by their fellow commenters.

For the purposes of informed and transparent discussion, it is important that potential commenters be on a level playing field as far as knowledge of relevant proposals. By not providing information, the Commission risks segregating the public into two groups: those who may have independent knowledge of the proposals and those who do not have independent knowledge. Those who may have independent knowledge include members of the Advisory Committee on International Postal and

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<sup>6</sup> Docket No. PI2012-1, Public Representative Comments, August 27, 2012, at 4 (PR Comments).

Delivery Services (Advisory Committee), headed by the U.S. Department of State.<sup>7</sup> As a result of their participation in the Advisory Committee, these parties have access to information which may not be available to members of the general public.<sup>8</sup>

The Public Representative is aware that the UPU uses a “series of deadlines” for when members may submit proposals. Additionally, the Public Representative understands that there are other considerations that may prevent the Commission from making the text or a summary of the relevant proposals available. As a result, the Commission may not always be able to provide the text or a detailed summary of relevant proposals when it establishes a section 407 public inquiry docket or sufficiently in advance of when comments are due. However, this possibility should not deter the Commission from doing so if time permits. The Public Representative strongly encourages that Commission to provide information regarding specific proposals in advance so that potential commenters are on a more level playing field in regards to access to information and, therefore, have an equal opportunity to meaningfully participate in the public inquiry docket.

## **B. Rule-Specific Recommendations**

### **1. Section 3017.1**

The Public Representative believes that the proposed rules will benefit if the Commission defines the term “relevant proposal.” As the proposed rules seek to formalize the procedure by which the Commission solicits comments that may inform

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<sup>7</sup> U.S. Department of State, *List of Committee Members*, (Aug. 20, 2015), <http://www.state.gov/p/io/ipp/102203.htm>.

<sup>8</sup> The Public Representative acknowledges that the Advisory Committee posts information regarding some proposals that are considered at meetings of the UPU Congress, the POC, and the CA on its website. However, it does not provide information regarding all proposals and the Commission should rely on the Advisory Council to provide such information.

the development of the Commission's view on "relevant proposals," it would be helpful if the Commission includes a definition of the type of proposals to which these rules are intended to apply. See Notice at 5, section 3017.3(a) and (b). As proposed, the rules are unclear as to the term "relevant." However, in previous reports to the Secretary of State, the Commission described the standard it applied when determining whether a proposal was relevant under section 407(c)(1). For example, in 2013, the Commission stated that it limited its review to proposals that affect a market dominant rate or classification.<sup>9</sup> Additionally, the Commission stated that it only reviewed current proposals, which meant that the proposals were not previously rejected or withdrawn and the proposals were not for future rates or classifications since such proposals "lack the requisite level of detail needed to develop a view." 2013 UPU Report at 1.

As drafted, the proposed rules indicate that the Commission will only provide views on proposals that affect "a market dominant rate or classification," but would not exclude proposals for future rates or classifications. Notice at 5, section 3017.1(b). The Public Representative recommends that the Commission amend section 3017.1 to clarify the scope of a section 407 public inquiry docket and define the term "relevant proposal." The Public Representative's suggestion is illustrated in Attachment 1.

## **2. Proposed Rule 3017.4(a)**

The proposed rules do not expressly provide interested parties with an opportunity to submit reply comments. Rather, the Commission states that "[d]ue to time constraints, [it] does not propose inviting reply comments." Notice at 3. However,

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<sup>9</sup> Postal Regulatory Commission, View provided to U.S. Department of State for the April 2013 Universal Postal Union Postal Operations Council, in accordance with 39 U.S.C. 407(c)(1), April 13, 2013, at 1 (2013 UPU Report).

since the proposed rules permit the Commission to “establish other deadlines for public comments[.]” it appears that the proposed rules allow the Commission to provide interested parties the opportunity to submit reply comments at its discretion. Notice at 6, section 3017.4(a). Because reply comments offer interested parties an opportunity to provide countervailing arguments or differing points of view, reply comments serve an important purpose in public inquiry dockets. If time permits, the Public Representative encourages the Commission to provide interested parties an opportunity to submit reply comments.

As drafted, the proposed rules allow the Commission to suspend or forego the solicitation of public comments if “such solicitation is not consistent with timely submission of Commission views to the Secretary of State.” *Id.*, section 3017.4(b). Given that the proposed rules include a provision that addresses the need to suspend or forego the solicitation of comments due to time constraints, the Public Representative encourages the Commission to amend the proposed rules so that an invitation to submit reply comments is the rule rather than the exception. This suggestion is illustrated in Attachment 1.

Additionally, potential commenters should be made aware of this opportunity to submit reply comments sufficiently in advance so that interested parties may timely prepare their comments. When the Commission established Docket No. PI2012-1, it did not provide for an opportunity to file reply comments. Order No. 1420. As a result, in its comments, Federal Express Corporation (FedEx) requested that the Commission allow interested parties to file reply comments and to establish a procedural calendar for



such filings.<sup>10</sup> On August 28, 2012, the Commission granted FedEx's request and ordered that reply comments be filed three days later on August 31, 2012.<sup>11</sup> Given the number and complexity of the issues, it may be difficult for all interested parties to review the comments and submit reply comments on three days' notice. Accordingly, the Public Representative believes that advanced notice of the opportunity to submit reply comments will facilitate public participation in the timely development of the Commission's view. The Public Representative encourages the Commission to amend the proposed rule so that interested parties receive advanced notice of the opportunity to file reply comments. This suggestion is illustrated in Attachment 1.

### **3. Section 3017.4(b)**

As proposed, section 3017.4(b) permits the Commission to suspend or forego the solicitation of public comments when it is not consistent with timely submission of the Commission's views to the Secretary of State. Given the uncertainty surrounding when the UPU may make relevant proposals available, it is understandable that the proposed rule seeks to provide the Commission some flexibility in soliciting public comments. Because section 407(c) does not require that the Commission solicit public comments when developing its views, the Commission is not required to initiate a public inquiry docket before developing its section 407 views. Accordingly, the Public Representative understands the Commission's need for flexibility and reserving the ability to suspend or forego solicitation of public comments when required for timely submission of its views to the Secretary of State.

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<sup>10</sup> Docket No. PI2012-1, Comments of Federal Express Corporation, August 27, 2012 at 1 (FedEx Comments).

<sup>11</sup> See Docket No. PI2012-1, Order No. 1451, Order Allowing for Reply Comments, August 28, 2012.

While the Public Representative understands the Commission's desire for flexibility as expressed in proposed section 3017.4(b), the Public Representative encourages the Commission to clarify the procedure should the Commission decide to suspend or forego the solicitation of public comments. At the very least, the Commission should notify the public when it determines that the solicitation of public comments is inconsistent with timely submission of its section 407 views to the Secretary of State. This suggestion is illustrated in Attachment 1.

### **CONCLUSION**

The Public Representative supports establishing rules to formalize the process by which the Commission solicits comments that may inform the development of the Commission's view that it will provide to the Secretary of State on certain international mail matters pursuant to 39 U.S.C. § 407(c)(1).

Respectively Submitted,

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## Attachment 1

### Part 3017—PROCEDURES RELATED TO COMMISSION VIEWS

Sec.

3017.1 Definitions in this part.

3017.2 Purpose.

3017.3 Establishment and scope of public inquiry docket.

3017.4 Comment deadline(s).

3017.5 Commission discretion as to impact of public comments on its views.

**Authority:** 39 U.S.C. 407; 503.

#### § 3017.1 Definitions in this part.

(a) *Modern rate regulation* refers to the standards and criteria the Commission has established pursuant to 39 U.S.C. 3622.

(b) Relevant proposal refers to a current proposal affecting a market dominant rate or classification.

(c) *Views* refers to the opinion the Commission provides to the Secretary of State in the context of certain Universal Postal Union proceedings on the consistency of a relevant proposal ~~affecting a market dominant rate or classification~~ with modern rate regulation.

#### § 3017.2 Purpose.

The rules in this part are intended to facilitate public participation in, and promote the transparency of, the development of Commission views.

#### § 3017.3 Establishment and scope of public inquiry docket.

(a) On or about 150 days before a Universal Postal Union Congress convenes, the Commission will establish a public inquiry docket to solicit comments on the general principles that should guide the Commission's development of views on relevant proposals, in a general way, and, if available, on specific relevant proposals.

(b) The public inquiry docket established pursuant to paragraph (a) of this section may also include matters related to development of the Commission's views, such as the availability of relevant proposals, Commission views, other documents, or related actions.

(c) The Commission shall arrange for publication in the *Federal Register* of the notice establishing each public inquiry docket authorized under this part.

#### § 3017.4 Comment deadline(s).

(a) The Commission shall establish a deadline for ~~public~~ initial comments and reply comments upon establishment of the public inquiry docket that is consistent with

timely submission of the Commission's views to the Secretary of State. The Commission may establish other deadlines for public comments as appropriate.

(b) The Commission may suspend or forego solicitation of public comments if it determines that such solicitation is not consistent with timely submission of Commission views to the Secretary of State.

(1) If the Commission determines that solicitation of public comments is inconsistent with timely submission of Commission views to the Secretary of State, the Commission shall file a notice of suspension that informs interested parties of its determination.

**§ 3017.5 Commission discretion as to impact of public comments on its views.**

The Commission will review timely filed comments prior to submitting its views to the Secretary of State.